

Chapter 8

Malta's New Labour Law - at a Glance

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The White Paper containing the proposed new Employment Relations Act (ERA) and the proposed revisions to the Industrial Relations Act (IRA) was presented to the press and the public by Acting Prime Minister and Minister for Social Policy Dr Lawrence Gonzi on Thursday 27th December 2001. Both documents had benefited already from a long spell of consultation, going back at least 10 years, and including a series of well-attended, national conferences. Both bills bear the mark of recommendations tabled by the Malta Council for Economic and Social Development (MCESD), which were included as annexes to the same White Paper. Individuals and organisations were invited to table comments to the Minister by not later than 31st January 2002.

The Employment & Industrial Relations Bill was published in April 2002; it being one Act consolidating the two prior pieces of legislation. In June 2002, the Bill started being debated in Parliament in the Committee Stage. This debate was concluded on 30th September 2002 after some tense moments, especially on the text of Article 64. The Act was passed by the House of Representatives on 21st October and the bulk of its provisions came into force on 27th December 2002.

The eventual Employment & Industrial Relations Act (Act 22 of 2002) is accompanied by a number of regulations which bring into force specific provisions. The passage of regulations by means of Legal Notices in Parliament, rather than amendments to the Act proper, is the preferred flexible method chosen to maintain

the Act up-to-date with any changes which may be required, including the coming into force of new social policy directives from the European Union, should Malta become an EU member. Regulations already drafted in the 'White Paper' stage include:

- Parental Leave Entitlement Regulations (now Legal Notice 426 of 2002);
- Guarantee Fund Regulations (now Legal Notice 432 of 2002);
- Part-Time Employees Regulations (now Legal Notice 427 of 2002);
- Posting of Workers in Malta Regulations (now Legal Notice 430 of 2002);
- Contracts of Service for a Fixed Term Regulations (now Legal Notice 429 of 2002);
- Information to Employees Regulations (now Legal Notice 431 of 2002);
- Collective Redundancies (Protection of Employment) Regulations (now Legal Notice 428 of 2002); and
- Transfer of Business (Protection of Employment) Regulations (now Legal Notice 433 of 2002).

Additional Regulations drafted to accompanying the coming into force of the Act include:

- Organisation of Working Time Regulations
- European Works Councils Regulations

What follows below is a synthesis of the new Act's most significant contents.

There are EIGHT Counts of Inspiration to the new Act:

- To dovetail the State's obligation to support economic

progress with the need to propel social development; and therefore balance work and non-work obligations and enhance the general quality of life.

- To address both the gender gap and the skills gap in our labour market, which are resulting in a stymied use of the national human resource pool.
- To overhaul features included in the former Conditions of Employment (Regulations) Act, known as CERA: it removes defunct provisions, recognises new ways of organising work and legalises practices which have not yet been adequately covered at law.
- To upgrade features included in the former Industrial Relations Act, known as IRA, and in particular to propose a wider definition of both “essential service” and “exemption from trade union membership”.
- To upgrade Malta’s ratification of international conventions at the United Nations, the International Labour Organisation and the Council of Europe.
- To harmonise national legislation with the social policy chapter of the European Union’s *acquis communautaire* (which includes some 20 non-‘health and safety’ directives establishing minimal requirements) and to adopt the EU’s revised Social Charter.
- To recognise professional conciliators which are distinct from the Department of Employment & Industrial Relations.
- To acknowledge the consultative function of the Malta Council for Economic and Social Development.
- To fulfil various pledges included in the Nationalist Party’s 1998 Electoral Manifesto.

Title I of the new Act incorporates the features which hitherto belonged to the Conditions of Employment (Regulations) Act of 1952.

The main features of Title I are the following:

ELEVEN Key Innovations:

- The flexibility enabling the Minister to legislate via subsidiary legislation (by legal notice) on various issues, permitting a piece of legislation that can be revised regularly, following consultation with the MCESD.
- Offences against specific sections of the new Act fall within the remit of the Magistrates' Court; while cases of unfair dismissal – including alleged discrimination and victimisation - are the declared competence of the Industrial Tribunal.
- In exceptional circumstances, employer and worker representatives can lawfully agree on a reduced working week or other, temporarily altered, working conditions.
- The Labour Board and the various Wages Councils are replaced by a more independent Employment Relations Board, which will recommend both National Standard Orders and Wage Regulation Orders.
- Explicit reference is made to occupational health and safety, protection against victimisation and protection against discrimination.
- Explicit reference is made to a collective agreement as the basic manner of regulating conditions of employment at enterprise level in Malta.
- Provisions of the new Act are to be applicable also to members of an employers' family, as well as to "any body corporate" which includes public corporations.
- Allowance is made for recognition of full-time employees with reduced hours.
- The basic probationary period is six months (instead of three), except for managerial or administrative employment, where it remains set at twelve months;

- Longer notices of termination of employment (the notice period) are included;
- ‘Whistle-blowers’ – employees reporting alleged illegal or corrupt activities committed by their employer to the competent authorities - are protected, and not only in cases of unfair dismissal.

TEN Key Transpositions of the EU Social Policy Regime:

- the organisation of working time, including the implementation of a 48-hour working time ceiling, inclusive of overtime (EU Directive 93/104);
- maternity leave - 14 weeks; 13 weeks of which paid; the main obligation being that of taking at least 6 weeks of such leave after delivery (EU Directive 92/85);
- parental leave, being a minimum of 3 months unpaid leave, which can be staggered, until child – born or adopted – is 8 years old (EU Directive 96/34);
- privileged debt, now comprising up to five months’ salary, in the event of employer insolvency; a guarantee fund is set up to protect this provision, initially with state funds (EU Directive 80/987);
- part-time employees, to be protected from discriminatory treatment and granted access to vocational training and adequate protection from unfair dismissal (EU Directive 97/81);
- the same non-discriminatory provisions are now also in place for employees on fixed-term contracts – better known locally as employees on definite contracts (EU Directive 99/70);
- protection against all forms of discrimination or victimisation, especially between men and women, with respect to recruitment, vocational training, promotion and other working conditions; this includes protection against

- sexual harassment (EU Directives 75/117 & 76/207);
- remuneration, not only of equal pay for equal work, but of equal pay for work of equal value (EU Directive 75/111);
 - elimination of discrimination with regard to the posting of foreign workers in Malta (EU Directive 96/71);
 - rights of employees to minimum information, not just of details relating to the basic conditions of employment (EU Directive 91/533) but also of details concerning collective redundancies and of the transfer of the business where they work, via merger or acquisition (EU Directives 77/187, 98/50 & 98/59).

Title II of the new Act incorporates the features which hitherto belonged to the Industrial Relations Act of 1976. The main features of Title II are the following:

FIVE Key Innovations:

- The inclusion of a whole range of persons who are not protected if they act in contemplation or furtherance of a trade dispute. These include: (a) Air Traffic Controllers and the Airport Fire Fighting Section, both at the Malta International Airport; (b) members of the Assistance and Rescue Force set up in terms of the Civil Protection Act; (c) minimum staff required to guarantee port safety and emergency services, including pilotage, mooring, tug services, fire-fighting, medical health services and pollution-combat services; (d) minimum staff required to guarantee that life is not endangered through the non-importation and discharge into Malta of wheat, grain, domestic gas, aviation fuel, diesel, petrol and oil fuel for the operation of air transport facilities, power generation and water; (e) such minimum number of persons to guarantee the continued production, provision and

distribution of water and electricity; and (f) such number of public officers listed in the First Schedule of the Act and engaged in offices which are required to be manned at all times. This Schedule now features a maximum of some 370 medical, administrative and para-medical grades.

- The increase in the number of managerial representatives who can be prevented by an employer from joining a trade union. This remains 3 for small firms; and goes up to 7 for firms with more than 200 employees.
- Introduction of a Panel of at least five independent, professional conciliators, appointed by the Minister after consultation with the MCESD.
- Inclusion of a definition of the recognition of a trade union by an employer or an employers' association for the purposes of collective bargaining.
- Granting of stronger powers to the Industrial Tribunal it enjoys: exclusive jurisdiction in cases of alleged unfair dismissal and in any breach of Title I of the new Act. Clearer guidelines are being suggested on the substance of Tribunal awards. The right of appeal on points of law is now proposed in disputes concerning alleged unfair dismissal, statutory rights or conditions of employment.